

1                   THE UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF TEXAS  
3                   HOUSTON DIVISION

4 ROBERT T. BROCKMAN                   \*       NO. 4:22-CV-202  
5 VS.                                      \*       Houston, Texas  
6 UNITED STATES OF AMERICA           \*       9:35 a.m. - 9:50 a.m.  
  \*       June 28, 2011

7                   \* \* \* \* \*

8                   **STATUS CONFERENCE**

9                   BEFORE THE HONORABLE GEORGE C. HANKS, JR.  
10                   UNITED STATES DISTRICT JUDGE

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GOVERNMENT  
EXHIBIT

Case No. 22-cv-00202  
No. 48

1     **APPEARANCES:**

2     For the Plaintiff:

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12               For the Defendant:

13                MR. HERBERT W. LINDER  
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BYRON THOMAS

Electronic Recorder:

ANTONIO B. BANDA

## **P R O C E E D I N G S**

9:35 A.M. - JUNE 28, 2022

3                   THE COURT: The next matter is 4:22-CV-202,  
4 Mr. Brockman vs. The Government. And are the same  
5 counsel going to argue that matter or do we have  
6 different counsel?

7 MR. VARNADO: It's the same counsel for  
8 Mr. Brockman. I say that briefly, Your Honor, just  
9 for the ease of the record. And my colleague, Kathy  
10 Keneally, will largely take the lead on this one. And  
11 I'll let the Government choose.

12 | THE COURT: Okay.

13 MR. LINDER: Good morning, Your Honor. Herb  
14 Linder, Jonathan Blacker, and John Nasta on behalf of  
15 the United States in the civil case, Your Honor,  
16 completely separate from the criminal case.

17 || THE COURT: Good morning.

18                    Well, thank you all for being here. I  
19 wanted to go ahead and get both of these matters in  
20 this morning. And thank you for the status report  
21 because I wanted to make sure and find out sort of  
22 where you all were with respect to the briefing. From  
23 what you provided me, everything is all set except for  
24 the fact that there are -- well, everything except for  
25 the Court to rule on the Motion for Determination of

1 the Complaint for Judicial Review; and except for  
2 Docket Entry No. 17, which is the USA's Motion to  
3 Extend the Page Limits; and then the Plaintiff's Motion  
4 for Leave to File a Supplemental Memorandum.

5 And then the Plaintiff has also asked for  
6 oral argument; is that correct?

7 MS. KENEALLY: That is correct, Your Honor.

8 MR. LINDER: Correct, Your Honor.

9 THE COURT: So how soon can the parties finish  
10 all the briefing for oral argument? This is going to  
11 be a priority on my docket. So you tell me.

12 The Motion to Extend Page Limits is  
13 granted. The Motion to File Supplemental Memorandum, I  
14 know that there was some opposition, but I believe that  
15 all of those need to be handled at one time. So I will  
16 give Plaintiffs leave to file a supplemental memorandum.  
17 And if the Government would wish to file anything else,  
18 they can as well, and we'll get a schedule for that and  
19 then we'll set this for oral argument as soon as the  
20 parties are ready. Then the Court will get a ruling to  
21 you within not longer than two weeks after that oral  
22 argument. I'll have it back to you and ready to go.

23 MS. KENEALLY: Your Honor, it's my  
24 understanding -- Your Honor, thank you for -- good  
25 morning, Your Honor.

1                   THE COURT: Good morning.

2                   MS. KENEALLY: Thank you for the rulings on  
3 those two motions. Now, we filed the Motion for  
4 Supplemental Memorandum, so the Court has that, and my  
5 understanding is the Government responded from there.  
6 So, on that motion, from at least the Plaintiff's point  
7 of view, our understanding is that the parties wished  
8 the Court to grant.

9                   THE COURT: Yeah, the only reason why I  
10 thought you might need the additional time is I knew  
11 there was a negotiation looks like in late March, early  
12 April, or mid-April on the topic, but I didn't know if  
13 any of that needed to be included.

14                  MS. KENEALLY: Your Honor, I can speak to  
15 that. The Supplemental Memorandum discusses a letter  
16 that was sent by [Jefferson] Trust offering to fully  
17 secure the XXX by using XXX, and would be in a manner  
18 that would fully secure XXX Enterprises. This is  
19 something that might XXX the trust, too, because the  
20 trust is potentially subject to exposure here in  
21 regards to this issue to be put out XXX liability --

22                  THE COURT: Right.

23                  MS. KENEALLY: My understanding from counsel  
24 for the trust, and I spoke with him yesterday, is, as  
25 we say in our XXX brief, I have declined to engage in

1 further discussion in a one-paragraph letter that said  
2 that we have obtained XXX. The initial letter from the  
3 trust counsel into question was that for the IRS to  
4 assist because the funds are right now in a Swiss Bank.  
5 And my understanding that the trust is XXX and there has  
6 been some question about making sure that this trustee  
7 has the authority to XXX of who the trustee is, that  
8 that's been fully resolved, that that information has  
9 been provided to XXX with the Court.

10                   And the request that was made by the  
11 trustee was to equip the transfer of that money to XXX.  
12 In reference to that XXX, our understanding is that the  
13 trustee is going to have to do everything he can to be  
14 able to move the money here and XXX that the regulation  
15 provides and therefore fully secure XXX.

16                   So that's my understanding where it stands  
17 at this point.

18                   THE COURT: Mr. Linder?

19                   MR. LINDE: Good morning, Your Honor.

20 That's not exactly accurate, Your Honor, in whole. We  
21 actually counseled with the trust in April, contacted  
22 the IRS and we actually had a phone call meeting about  
23 the requirements for posting a bond and how they would  
24 post the bond. So a transfer, we have not heard  
25 anything from them. We had about a half an hour, maybe

1 an hour discussion on the requirements for posting a  
2 bond, how do you post a bond, what was maybe acceptable  
3 to the IRS, if in fact it's at the IRS's discretion.  
4 And we've heard nothing since.

5 So that is not an option. No bond has  
6 been posted. No one has contacted the IRS or the  
7 counsel for the Government in this case since April.  
8 I believe it was April 20th, right around the 20th.  
9 That's over two months.

10 In regard to the Swiss and the requirement  
11 of the -- the request of the U.S. to intervene, I  
12 believe the understanding of counsel for the Government  
13 is that the funds in question are frozen by the Swiss  
14 Government and the Swiss Government may have its own  
15 claim. So it's inappropriate for us to respond and  
16 request the Swiss Bank to do something to get the funds  
17 that are frozen by the Swiss Government. So that is  
18 our understanding and that's why [we're requesting] the  
19 Government in this case not to be writing letters to  
20 the Swiss -- if the Swiss matter is resolved with the  
21 Swiss Government, I don't know why they would need a  
22 letter or cooperation from our Government, from us in  
23 this matter.

24 So I believe the Swiss have no proceeding  
25 against the funds that are over there. And if they

1 don't have the opportunity to get the funds over there,  
2 I don't see what would prevent the trust from  
3 transferring funds within the U.S. They wouldn't need  
4 a letter from us. They need -- our involvement is  
5 because the Swiss Government, I believe, has just  
6 frozen the funds. I don't know if that's all public,  
7 but that is what our understanding of this is.

8                   So, as of today's date, there's no  
9 settlement. There's no bond posted. There's been no  
10 discussions of any bond posted. There's been no  
11 transfer of any funds in the U.S. by the trust that  
12 they have alerted us. So the [question] is not stayed  
13 under the statute and we've had no further discussions  
14 that on that, Your Honor.

15                  THE COURT: Okay. Do you understand now  
16 whether, you know, after the supplemental -- the  
17 request had been filed, whether any other development --  
18 and from the status of it, it seems like there hasn't  
19 been anything done, there's no advance payment, nothing  
20 has been done. I just wanted to confirm that that was  
21 the case still.

22                  Ms. Keneally?

23                  MS. KENEALLY: Yes, that's correct, Your  
24 Honor. But I need to respond to Mr. Linder as to his  
25 statement that what I said wasn't correct and clarify

1 some additional information.

2                   And it may be that the answer here, given  
3 that -- it may be the answer here is that we do in fact  
4 need to do some supplemental addition to the Court with  
5 information coming from somewhere, to the extent that I  
6 can get that information. But Mr. Linder does not know  
7 what counsel for the trust has been trying to  
8 accomplish in communication.

9                   It is correct that there was a letter from  
10 the IRS to counsel for the trust that I've been made  
11 aware of, but I don't have it. I haven't seen anything  
12 then with a followup discussion. And then my  
13 understanding is that in the absence of any XXX, that  
14 counsel for the trust XXX done what it can in meeting  
15 the request made by the Swiss Bank.

16                  And I'm told that it's going to take time  
17 and that it would move more quickly with the  
18 communication to the Swiss Bank that the United States  
19 Government doesn't object to the money XXX from the  
20 Swiss Bank to the United States for the purpose of  
21 posting a bond for securing the XXX trust. That's what  
22 I understood, that things would move more quickly if  
23 the IRS would cooperate in that in that regard.

24                  Separately, I'm unaware of any action  
25 taken by the Swiss Government and it's the intention of

1 the Swiss Government that that money cannot move in the  
2 manner that XXX. And I am unaware, based on  
3 conversations I've had with counsel for the trust, that  
4 they are unaware of that being a barrier.

5                   There are two accounts, as I understand  
6 it, in the same bank in Switzerland and there may be  
7 some concern about the other account and the interest  
8 with the other account. As to this account, with these  
9 funds, to the best of my understanding -- and we can  
10 provide supplemental information to the Court to  
11 confirm all this -- there's no barrier other than  
12 satisfying the tax. And I understand that there is no  
13 objection by the United States to having those funds  
14 because, in fact, the very XXX which the Government  
15 contends taxes weren't paid, we XXX to secure any  
16 potential tax owed.

17                   So that is my best understanding and we  
18 can supplement that request to have counsel to provide  
19 information XXX.

20                   THE COURT: At this point -- I guess I'd like  
21 to hear from you, but at this point, from reading the  
22 briefing, it's basically nobody really knows what's  
23 going on. I mean, nobody has actually stated exactly  
24 what's going to happen to these funds, can they be  
25 transferred. Is there any possibility you can just get

1 something from the Swiss Government stating what you  
2 just said? And if you can provide that to Mr. Linder,  
3 would that take care of it?

4 MS. KENEALLY: Your Honor, I don't know that I  
5 have leanings to get anything from the Swiss Government.

6 THE COURT: Then that's kind of the problem  
7 because unless everybody knows that that can be done,  
8 then Mr. Linder is in a position where he's just  
9 basically taking everybody's word for it without having  
10 anything to back it up.

11 MS. KENEALLY: I can get information from the  
12 trust, the trust counsel, that can spell out for  
13 everyone the steps they are taking XXX, the advantage  
14 if the IRS would cooperate in getting it here. In  
15 multiple conversations, there are no barriers presented  
16 by Switzerland. And they don't believe there are any  
17 barriers by Switzerland. The bank has not said that  
18 there is a barrier, that the Swiss Government won't let  
19 the money move. Counsel to the parties of the account  
20 says he's unaware of XXX from the account. So I can  
21 get that and provide that to the Court, and Mr. Linder  
22 can respond appropriately.

23 THE COURT: Well, here's what we'll do. And  
24 Mr. Linder, let me hear from you the last word. But it  
25 sounds like I have everything I need. We just need to

1 set this for oral argument and I can get an answer back  
2 to you so that you can figure out what the next steps  
3 you need to take in the tax court. So, Mr. Linder,  
4 I'll give you the last word, but then after that, I  
5 think we'll set this.

6 I know that this matter can be handled on  
7 the briefing alone. There's no requirement for oral  
8 argument or any sort of evidentiary hearing beyond  
9 what's submitted. But in light of the issues involved,  
10 I'd like to go ahead and schedule oral argument and  
11 give the parties a complete opportunity to argue the  
12 matter and then make a decision so that you can both  
13 figure out what to do next.

14 Mr. Linder?

15 MR. LINDER: Thank you, Your Honor. I believe  
16 oral argument is the proper way to go at this point.  
17 But if the Court wants, I don't think we need to wait  
18 any further on what may or may not happen with this.  
19 It's interesting that we've received no communication  
20 or contact or a letter from the Swiss Bank -- from the  
21 Swiss Bank saying you needed to write them a letter.

22 I can't speak technically if anybody was  
23 communicating with the Swiss Government. It should  
24 be --

25 THE COURT: Full investigation.

1                   MR. LINDER: -- full investigation. Thank  
2 you, Your Honor. As to our understanding, we've  
3 received no request or contact from the Swiss Bank that  
4 they are waiting for the IRS.

5                   In regards to the communications with the  
6 trust, I was actually on a phone call meeting with the  
7 trustee from -- or the counsel for the trustee and we  
8 were discussing the bond. In that discussion it was  
9 never raised by -- it was never raised of an issue  
10 moving from the Swiss -- or using a Swiss Bank account.  
11 At that point it was more along the lines of how are  
12 they going to post bond XXX credit.

13                  But I don't think we need to wait on the  
14 Swiss. I think the Court can rule. If the Court  
15 rules in favor of the defendant -- or excuse me,  
16 Mr. Brockman, the plaintiff in this case, then there  
17 would be no need to further discuss.

18                  If the Court rules in favor of the  
19 Government, there's nothing preventing them from coming  
20 in at a later date and negotiating with the Government  
21 and try and post a bond or use the Swiss Bank to XXX  
22 stay in Washington. I mean, that's the law by the  
23 statute. And we XXX those discussions.

24                  So I think at this point the United States  
25 would like the Court to go forward and rule.

1                   THE COURT: Does anyone have any -- oh, I'm  
2 sorry.

3                   MS. KENEALLY: I know you said Mr. Linder gets  
4 the last word. But he keeps talking about action by  
5 the Swiss Government and we are unaware of any action  
6 by the Swiss Government. We are unaware of any  
7 restraint or XXX by Swiss Government in this account,  
8 and that that would be a communication between the two  
9 governments.

10                  He keeps referring to this as if it's  
11 there. But we're unaware that it's there. What we're  
12 dealing with is the hesitancy of the Swiss Bank in the  
13 middle of this dispute as a criminal tax case and the  
14 rest of it. And I agree, I have repeatedly asked for a  
15 XXX, so I'm happy to have oral argument. But I would  
16 like a brief amount of time to supplement the rest of  
17 the information that I've provided second-hand today.  
18 If I can get that to the trust counsel so that the  
19 record -- they are currently making to give the money  
20 to the United States, we XXX what they need in order to  
21 be able to post a bond to secure that XXX. Because  
22 they need the funds, we need the funds, and they are  
23 trying to get that.

24                  THE COURT: Well, let's go ahead and just set  
25 this for oral argument. When can you get any

1 supplemental information to me, Ms. Keneally?

2 MS. KENEALLY: I'm looking at my calendar.

3 Would it have to be in the next week?

4 THE COURT: Oh, yes, that's not a problem, not  
5 a problem. Next week is a short week because of the  
6 4th of July holiday. So you probably need to take that  
7 into effect. And then we can set it for oral argument  
8 the week after that.

9 MS. KENEALLY: I'm looking at my calendar.

10 Thank you for reminding me it's a short week. So if we  
11 get it to you the 15th.

12 THE COURT: I'm sorry?

13 MS. KENEALLY: The information to you by July  
14 15th.

15 THE COURT: Okay, by July 15th.

16 And Mr. Linder, would you like an  
17 opportunity after that to provide any information or  
18 respond?

19 MR. LINDE: Yes, Your Honor, I would like to  
20 reserve the right to respond to what they file with the  
21 Court. I think we could probably get response. If  
22 they're done by the 15th, we could probably briefly  
23 respond within a week.

24 THE COURT: Okay, great. So you can get your  
25 response on the 15th, and then any reply would be due

1 by the 27th. And I'll set it immediately for a hearing  
2 either -- the week of 27th or the following week, we'll  
3 set it for oral argument. And then I will have an  
4 answer back to you within a week or two weeks.

5                   I've studied the materials. I've read  
6 the cases you've cited. I really want to look at the  
7 evidentiary argument -- the evidence -- look at it from  
8 an evidentiary standpoint from what you've presented.  
9 But I've got the briefing. I just wanted to see what  
10 additional arguments you have and then I can get a  
11 ruling to you.

12                  MR. LINDER: Your Honor, again just for  
13 clarification, I believe Ms. Keneally is going to  
14 provide her additional information and respond on the  
15 15th?

16                  THE COURT: Yes.

17                  MR. LINDER: You were going to respond by the  
18 22nd?

19                  THE COURT: You said the 22nd, yeah.

20                  MR. LINDER: Yeah. And then I guess we would  
21 be doing oral arguments some time between 25th and 29th;  
22 would that be --

23                  THE COURT: Yes, sir.

24                  MR. LINDER: Does the Court have a date in that  
25 week?

1           THE COURT: Oh --

2           MR. LINDER: Just trying account for our  
3 travel.

4           THE COURT: Travel? I will pick it. I will  
5 get a date for you. As soon as I can talk to my case  
6 manager, I'll get a date back to you right away so you  
7 will have a date certain for the hearing.

8           MR. LINDER: That's fine.

9           THE COURT: So you can plan. Then I will get  
10 an answer back to you literally within a week, no  
11 longer than two weeks. I will get an answer back to  
12 you and you will be ready to go one way or the other.

13          MR. LINDER: Thank you, Your Honor.

14          THE COURT: Not a problem.

15           Is there anything else that's pressing in  
16 that case you need to talk about?

17          MS. KENEALLY: No, Your Honor.

18          MR. LINDER: Not that --

19          MS. KENEALLY: Just to confirm, it will be in  
20 person?

21          THE COURT: Right, it will be in person.

22          MS. KENEALLY: Excellent. Thank you, Your  
23 Honor.

24          THE COURT: If there's nothing further, thank  
25 you all for being available this morning for the

1 hearing. If anything comes up, Mr. Varnado, in your  
2 matter, let me know as soon as possible. Mr. Smith, as  
3 well. And Mr. Linder and Ms. Keneally,

4 I look forward to your briefing in about a  
5 week or so, or two weeks.

6 MR. LINER: Thank you, Your Honor.

7 MS. KENEALLY: Thank you, Your Honor.

8 MR. SMITH: Thank you, Your Honor.

9 THE COURT: Okay, thanks, everyone. And the  
10 hearing is adjourned and we'll talk again soon. Take  
11 care.

12 ALL COUNSEL: Thank you, Your Honor.

13 **[10:11 a.m. -- Proceedings adjourned]**

14

15 C E R T I F I C A T I O N

16

17 I certify that the foregoing is a correct  
18 transcript of the electronic sound recording of the  
19 proceedings in the above-entitled matter.

20

21

22 /s/ Gwen Reed

23 7-1-22

24

25